

**Introduced by Senator Romero**

February 22, 2005

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An act to amend Section 32010 of, and to add Chapter 3.58 (commencing with Section 7289.20) to Part 1.7 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 656, as introduced, Romero. Taxation: alcoholic beverages.

The Alcoholic Beverage Tax Law provides that taxes imposed by that law are in lieu of all county, municipal, or district taxes on the sale of beer, wine, or distilled spirits.

This bill would provide an exception to this prohibition by authorizing the board of supervisors of a county, subject to certain conditions that include voter approval, to levy on a countywide basis, for revenue purposes only, a tax on the privilege of consuming beer, wine, and distilled spirits, as defined, purchased in a retail sale for consumption on the premises of the seller, at a rate of at least  $\frac{1}{8}$  of 1%, but not to exceed 5%, of the sale price, as provided.

The bill would require the board of supervisors of a county either to notify the State Board of Equalization that the county will administer its tax on its own behalf or that it will contract with the State Board of Equalization to administer the tax, as provided.

This bill would also specify that a tax imposed under those provisions shall conform to certain tax laws and not prohibit the concurrent application or administration of other taxes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares that the  
2 economic condition of the state has increased demand for  
3 governmental services beyond what depressed revenues can  
4 finance. The Legislature further finds and declares that the  
5 inability of local government to adequately provide essential  
6 services is a matter of statewide concern, and that this measure is  
7 necessary to meet that concern by allowing local governments to  
8 maintain critically needed public services.

9 (b) The Legislature further finds and declares that because  
10 counties lack a strong revenue base upon which to levy new  
11 taxes, counties are constrained in their ability to raise sufficient  
12 new revenues to meet the needs of their constituencies. These  
13 fiscal restraints limit the counties' flexibility to fund and  
14 administer the types and levels of programs needed by their  
15 constituencies, thereby hindering the counties' ability to provide  
16 those necessary programs and services. Authorizing counties to  
17 raise new revenues for local program needs, such as county  
18 health care, is therefore of considerable interest to the state.

19 SEC. 2. It is the intent of the Legislature in enacting this act to  
20 allow the board of supervisors of a county to levy, on a  
21 countywide basis for revenue purposes only, a tax on the  
22 privilege of consuming beer, wine, and distilled spirits purchased  
23 in a retail sale for consumption on the premises of the seller of  
24 the beer, wine, or distilled spirits. It is not the intent of the  
25 Legislature to create a transactions and use tax as described in  
26 Part 1.6 (commencing with Section 7251) of Division 2 of the  
27 Revenue and Taxation Code.

28 SEC. 3. Section 32010 of the Revenue and Taxation Code is  
29 amended to read:

30 32010. ~~The~~ (a) *Except as otherwise provided in Chapter 3.58*  
31 *(commencing with Section 7289.20), the taxes imposed by this*  
32 *part are in lieu of all county, municipal, or district taxes on the*  
33 *sale of beer, wine, or distilled spirits.*

34 ~~This~~

35 (b) *This section does not prohibit the application of Part 1*  
36 *(commencing with Section 6001), Part 1.5 (commencing with*  
37 *Section 7200), or Part 1.6 (commencing with Section 7251) to*

1 the sale, storage, use or other consumption of beer, wine, or  
2 distilled spirits.

3 SEC. 4. Chapter 3.58 (commencing with Section 7289.20) is  
4 added to Part 1.7 of Division 2 of the Revenue and Taxation  
5 Code, to read:

6  
7 CHAPTER

8 3.58. COUNTY ALCOHOLIC BEVERAGE TAX AUTHORITY  
9

10 7289.20. (a) Subject to the requirements of subdivision (b),  
11 the board of supervisors of a county may impose a tax, in  
12 addition to any other tax authorized by this division, on the  
13 privilege of consuming beer, wine, or distilled spirits purchased  
14 in a retail sale for consumption on the premises of the seller of  
15 the beer, wine, or distilled spirits. The board of supervisors may  
16 impose this tax within an incorporated city within the county.

17 (b) Any tax imposed under this section shall meet all of the  
18 following requirements:

19 (1) (A) An ordinance proposing a general tax shall be  
20 approved by a vote of two-thirds of the entire membership of the  
21 county board of supervisors, and shall be approved by a majority  
22 of the county's voters voting on the issue in an election.

23 (B) An ordinance proposing a special tax shall be approved by  
24 a majority vote of the entire membership of the county board of  
25 supervisors, and shall be approved by two-thirds of the county's  
26 voters voting on the issue in an election.

27 (2) The ordinance proposing the tax shall state the purpose or  
28 purposes for which the tax revenues are to be expended.

29 (3) The ordinance proposing the tax shall state the rate of the  
30 tax and the length of time for which the tax shall be imposed.

31 (4) The ordinance proposing the tax shall provide that the tax  
32 shall conform to Part 1.6 (commencing with Section 7251).

33 (5) The tax shall be imposed at a rate of at least one-eighth of  
34 1 percent, with greater rates in increments of one-eighth of 1  
35 percent, but not to exceed 5 percent of the underlying sale price,  
36 inclusive of other charges, taxes, or levies.

37 (c) (1) A producer, distributor, wholesaler, or retailer of beer,  
38 wine, or distilled spirits is not subject to the tax imposed pursuant  
39 to this section.

1 (2) The charging of an admission or sampling fee by breweries  
2 or wineries does not constitute the sale of beer, wine, or distilled  
3 spirits for consumption on the premises of the seller within the  
4 meaning of this section.

5 7289.21. For purposes of this chapter, “beer, wine, and  
6 distilled spirits” have the same meanings as provided in Sections  
7 23006, 23007, and 23005 of the Business and Professions Code.

8 7289.22. (a) The imposition of a tax pursuant to this chapter  
9 does not prohibit the concurrent application of a tax imposed  
10 pursuant to the Sales and Use Tax Law (Part 1 (commencing  
11 with Section 6001)), the Bradley-Burns Uniform Sales and Use  
12 Tax Law (Part 1.5 (commencing with Section 7200)), or of a tax  
13 imposed in accordance with the Transactions and Use Tax Law  
14 (Part 1.6 (commencing with Section 7251)), to the sale, storage,  
15 use, or other consumption of beer, wine or distilled spirits.

16 (b) Notwithstanding Section 7203.5 or any other provision of  
17 law, the imposition of a tax pursuant to this chapter by a county  
18 does not prohibit the concurrent administration by the board of a  
19 sales or use tax ordinance adopted by that county pursuant to the  
20 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5  
21 (commencing with Section 7200)).

22 7289.23. Any ordinance levying a tax pursuant to this chapter  
23 shall provide that the tax shall conform to Part 1.6 (commencing  
24 with Section 7251). However, a tax imposed pursuant to this  
25 chapter is not a sales tax or transactions tax, and shall not be  
26 considered for purposes of Section 7251.1.

27 7289.24. An ordinance adopted pursuant to this chapter shall  
28 be operative on the first day of a calendar quarter commencing  
29 more than 110 days after the adoption of the ordinance.

30 7289.25. Every retailer engaged in business in a county that  
31 has an operative ordinance adopted pursuant to this chapter shall,  
32 at the time of making a sale of beer, wine or distilled spirits for  
33 consumption on the premises of the seller, collect the tax from  
34 the consumer and give to the consumer a receipt therefor in the  
35 manner and form prescribed by the State Board of Equalization  
36 or by the county board of supervisors, if the county elects to  
37 administer its own tax pursuant to subdivision (a) of Section  
38 7289.26.

1 7289.26. Prior to the operative date of any ordinance  
2 imposing a tax pursuant to this chapter, the board of supervisors  
3 of the county shall do either of the following:

4 (a) Notify the State Board of Equalization in writing that the  
5 county will be responsible for administering the tax imposed  
6 pursuant to an ordinance authorized by this chapter on its own  
7 behalf, and that the ordinance does not impose any duties or  
8 responsibilities for administering the tax upon the State Board of  
9 Equalization.

10 (b) Contract with the State Board of Equalization to perform  
11 all functions incident to the administration and operation of the  
12 ordinance. If the county has not contracted with the board prior  
13 to the operative date of the ordinance, but shall contract, the  
14 operative date shall be delayed until the first day of the first  
15 calendar quarter following the execution of the contract.

16 7289.27. For a county that elects to contract with the State  
17 Board of Equalization to administer a tax imposed by the county,  
18 as authorized by this chapter, the following provisions apply:

19 (a) The contract shall contain the following provisions:

20 (1) A provision that the county shall reimburse the State Board  
21 of Equalization for, and hold the board harmless from, any and  
22 all costs, losses, or refunds.

23 (2) A provision that, in the event that a legal action is  
24 commenced challenging the validity of the tax in its entirety, as  
25 opposed to the application of the tax to an individual taxpayer,  
26 the county shall place the tax proceeds into an interest-bearing  
27 escrow account until the legality of the tax is resolved by a final  
28 and nonappealable decision of rendered by a court of competent  
29 jurisdiction. This provision is enforceable by any interested party  
30 in a proceeding for a writ of mandate.

31 (b) The county shall reimburse the State Board of Equalization  
32 for any costs the board incurs in preparing to administer and  
33 operate the tax. The county shall reimburse the board as the costs  
34 are incurred and billed by the board, on a monthly basis. These  
35 reimbursable costs shall include costs incurred for the following:

36 (1) Developing procedures.

37 (2) Programming for data processing.

38 (3) Developing and adopting appropriate regulations.

39 (4) Designing and printing forms.

1 (5) Developing instructions for the State Board of Equalization  
2 staff and for taxpayers.

3 (6) Any other necessary preparatory costs, including the State  
4 Board of Equalization's direct and indirect costs as specified by  
5 Section 11256 of the Government Code.

6 (c) Any disputes as to the amount of preparatory costs incurred  
7 by the State Board of Equalization shall be resolved by the  
8 Director of Finance, whose decision shall be final. The maximum  
9 amount of all preparatory costs to be paid by the county to the  
10 board shall not exceed one hundred seventy-five thousand dollars  
11 (\$175,000).

12 (d) In addition to the amounts paid to the State Board of  
13 Equalization for the preparatory costs described in subdivision  
14 (b), the county shall reimburse the board for the cost of the  
15 board's services in administering the tax. The amount of this cost  
16 shall be determined by the board with the concurrence of the  
17 Department of Finance.

18 (e) All revenues collected from taxes imposed pursuant to the  
19 authorization of this chapter in counties that have contracted with  
20 the State Board of Equalization to administer the tax shall be  
21 remitted to the board and allocated by the board as follows:

22 (1) First, for reimbursement to the board for the reasonable  
23 costs, as specified in subdivisions (b) and (d), of administering  
24 and enforcing the tax ordinance on behalf of the county pursuant  
25 to the contract between the board and the county.

26 (2) Second, for transmission to each county that has contracted  
27 with the board pursuant to subdivision (b) of Section 7289.26, in  
28 proportion to the amount of revenues derived from each county's  
29 respective tax.

30 (f) The State Board of Equalization shall transmit to a county  
31 all revenues derived from the taxes imposed pursuant to this  
32 chapter and collected by the board pursuant to a contract with the  
33 county periodically as promptly as feasible. The transmittals shall  
34 be made at least twice in each calendar quarter.

35 7289.28. Except as provided in Section 7289.29, to the extent  
36 practicable, Chapter 5 (commencing with Section 6451), Chapter  
37 6 (commencing with Section 6701), Chapter 7 (commencing with  
38 Section 6901), and Chapter 8 (commencing with Section 7051)  
39 of Part 1, shall govern determinations, collection of tax,

1 overpayments, and refunds, and administration of all taxes  
2 imposed under the authorization of this chapter.

3 7289.29. The return and payment of any tax imposed pursuant  
4 to the authorization of this chapter and collected by a retailer as  
5 specified in Section 7289.25 is due and payable from the retailer  
6 to the board on the same date as the return and payment of the  
7 tax imposed pursuant to Part 1 (commencing with Section 6001),  
8 provided that the retailer is within the jurisdiction of a county  
9 that elects to contract with the board to administer the tax,  
10 pursuant to subdivision (b) of Section 7289.26. If the retailer is  
11 within the jurisdiction of a county that has elected not to contract  
12 with the board to administer the tax, the return and payment of  
13 the tax imposed pursuant to the authorization of this chapter is  
14 due and payable from the retailer as prescribed in the ordinance  
15 adopted by the county.

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